IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

CRP.No. 740 of 2007()

AGAINST THE ORDER DATED 21/07/2007 IN IA 2046/2007 IN OS.258/2005 of II ADDL.SUB COURT,ERNAKULAM

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REVN. PETITIONER: IST RESPONDENT/IST DEFENDANT

M/S.NEW NANDILATH AGENCIES, THRISSUR,
PARTNERSHIP FIRM, REP. BY ITS MANAGING PARTNER
MR.N.G. GOPALAKRISHNAN, S/O.GOVINDAN NANDILATH,
NANDILATH HOUSE, P.O.POOTHOLE, THRISSUR.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS: PETITIONER & RESPONDENTS 2 & 3/PLAINTIFF

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1. M/S.ANCHOR DAEWOO INDUSTRIES LTD,
BUILDING NO.6/814A, AIRPORT SEA PORT ROAD, NEAR
VALLATHOLE JUNCTION, NOW AT 32/2475A, PRATHEEKSHA,
PALARIVATTOM, ERNAKULAM DISTRICT. REP. BY
BRANCH MANAGER, SANTHOSH KUMAR.

2. K.V.SAJIKUMAR, PARTNER,
M/S.NEW NANDILATH AGENCIES,
KURUPAM ROAD, THRISSUR.

3. K.V.RAJEEVKUMAR,
M/S.NEW NANDILATH AGENCIES,
KURUPAM ROAD, THRISSUR.

BY

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 08/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.GIRI,J.

CRP 740 of 2007

Dated this the 8th day of August, 2007

ORDER

The first defendant in O.S.258/2005 on the file of the II Additional Sub Court Ernakulam is the revision petitioner. The first respondent instituted the suit claiming an amount of Rs.10,91,543.76 with interest and cost. According to the petitioner, substantial defence has been taken out in the suit.

2. The suit was listed for trial on 13.7.2006. It was dismissed on the same day for the default on the part of the plaintiff. Within 30 days from the date of dismissal, an application for setting aside the order of dismissal and restoration of the suit was filed on 12.8.2006. Apparently, the same was objected to on the premise that proper persons were not impleaded and the application was defective. Accepting the objections raised in that behalf, the said application is said to have been dismissed on 3.2.2007 and on 20.3.2007 fresh application for restoration along with an application for delay of 208 days was filed by the plaintiff. The court below, by the impugned order, condoned the delay preferring the application for restoration

and allowed the application for restoration on payment of an amount of Rs.1000/= by way of cost. It is the said order that has been impugned in the revision.

2. I am of the view that an order passed by the court below condoning the delay in filing an application for restoration of a suit for default is discretionary taking into account the conduct of the parties and circumstances of the case. At any rate, it cannot be said that the court below has committed any illegality or impropriety in condoning the delay of 208 days in preferring the application for restoration. It is pertinent to mention that the application for restoration of the suit was originally filed by the plaintiff within 30 days of dismissal of the same and a major portion of the delay is the time taken for prosecution of the said application. The delay could be condoned, especially taking note of the serious contentions the parties have raised in the suit.

In the circumstances, I see no grounds to interfere with the order passed by the court below.

Civil Revision Petition is dismissed as above.

V.GIRI,JUDGE

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